IN THE

Supreme Court of the United States

October Term, 1974
No. 74-1429

MARINA B. SIMES and VALERIE S. PARKER,
Petitioners,

vs.

ROBERT C. HAASE, JR., Esq., MARIA ELENA HAASE; HARBOR SAVINGS & LOAN ASSOCIATION (USLIFE SAVINGS), a California corporation, *et al.*,
Respondents.

Opposition to Petition for Writ of Certiorari.

Petitioners seek a review under 28 U.S.C. 1257(3). Petitioners for the first time urge that the foreclosure sale as well as the California court's dismissal of petitioners' action constituted a wrongful deprivation of property in contravention of the Fourteenth Amendment to the United States' Constitution. Further, they now contend they were denied due process and equal protection of the law.

The basis for the dismissal of petitioners' action is succinctly set forth in the California Court of Appeal's opinion affirming the trial court's order dismissing petitioners' action for failure to initiate the action within four years after February 16, 1967, the date when petitioners' property was foreclosed and sold.

Petitioners' action below sought to recover certain real property by voiding a foreclosure sale after petitioners' default on a note secured by a deed of trust. Petitioners concede that they had defaulted on the $22,000 principal obligation secured by the deed of trust but urge that the lender had accepted petitioners' partial payment in cure of the default but, nonetheless, in derogation of its agreement, allege that the lender foreclosed and sold the property to the respondents Haase. Petitioners' position was described by the Court of Appeal as:

> "Plaintiffs' theory of their right to quiet title to the property is simply that the sale under the deed of trust was invalid since the plaintiffs were not in default at the time of the sale."

Petitioners never contended that the foreclosure sale itself or the conduct of the sale contravened the law or the Constitution. Petitioners' only claim was that the sale was invalid because petitioners were not in default when the property was foreclosed. The only issue before the trial court on demurrer and the Court of Appeal was whether petitioners had filed their action after passage of the applicable limitations period. Petitioners sought to avoid the bar of the applicable limitations statute and to that end amended their complaint three times without avail. The trial court and the California Court of Appeal held that petitioners filed their action more than four years after the foreclosure sale and that the action was barred. Petitioners have cited no authority suggesting that the California court's dismissal was improper.

Moreover, the trial court dismissed petitioners' action following four hearings on four separate demurrers to

petitioners' four complaints. The dismissal was followed by a further hearing in the trial court on petitioners' motion for reconsideration of the order of dismissal. In addition, petitioners argued their appeal before the California Court of Appeal.

There was no deprivation violative of the Fourteenth Amendment nor any denial of due process or the equal protection of the law.

We respectfully submit petitioners have failed to present any reason to grant their Petition.

LAWLER, FELIX & HALL,
JOHN G. WIGMORE,

Attorneys for Respondents Robert C. Haase, Jr. and Maria Elena Haase.